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an earlier stage when it was suggested to him privately by the court.¹ But the contrary is the rule in civil cases.²

Even from the foregoing, however, it is apparent that when counsel is seeking a reversal and new trial in an appellate court, it is a cheering and a comforting sight to turn in the record to "instructions" and find the bills of exception relating thereto of goodly size. Under such circumstances counsel is apt to exclaim, in the language of that Prince of Pleaders, "My desire is . . . that mine adversary had written a book."

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PROCEEDINGS AGAINST ABSCONDING JUDGMENT-DEBTOR.

The usual method of proceeding against debtors of this class seems to be under section 3606 of the Code, by which provision is made for the arrest of judgment-debtors about to quit the State, and from this common and exclusive usage the opinion seems generally to prevail that there is no other method that can be employed to enforce a claim already reduced to judgment against the judgment-debtor. Section 3606 reads as follows:

"Where a debtor named in a writ of *feri facias*, after being served with summons issued by a commissioner, fails, within the time prescribed therein, to file answers upon oath to said interrogatories, or shall file answers which are deemed by the commissioner to be evasive, if the judgment-creditor show, by affidavit, to the satisfaction of the commissioner, that there is probable cause for believing that the said debtor is about to quit this State, unless he be forthwith apprehended, a writ shall be issued by the commissioner, directed to the sheriff of any county or the sergeant of any corporation, requiring such sheriff or sergeant to take the debtor and keep him safely until such answers to the interrogatories as the commissioner deems proper shall be filed, and such conveyance and delivery as he deems proper shall be made, or until a circuit or corporation court, or a judge of such court in vacation, shall direct the debtor's discharge."

The perils and pitfalls to which the creditor becomes liable while proceeding under this section, since the amendments of sections 3603 and 3604, Acts of 1897-98, p. 503, which must be read in this connection, are pointed out in an article in 6 Va. Law Register, 804, by

¹ State v. Cobbs, 40 W. Va. 718. See also Gibson's Case, 2 Va. Cas. 70; Sledd's Case, 19 Gratt. 813; State v. Davis, 31 W. Va. 390.

² Jarret v. Stevens, 36 W. Va. 445; Tully v. Despard, 31 W. Va. 973.

Mr. George Bryan, of the Richmond bar. On the other hand, the dilatoriness of these proceedings often terminates in the escape of the elusive debtor, and the disappointed creditor finds that the bird has flown before the trap could be sprung. "In vain in the sight of the bird is the net of the fowler displayed." To effectuate proceedings of this nature celerity is essential. The perils and procrastinations of proceedings under the above section render them always dangerous and generally ineffectual.

The judgment-creditor is not, however, confined to this precarious remedy, which is merely supplementary to the enforcement of his judgment by execution. He may proceed by the sure and speedy method pointed out in section 2991 of the Code, namely, by a new and independent action of debt on his judgment, and immediately seize the body of his judgment-debtor on a *capias ad respondendum*, and hold him to answer the desired interrogatories and to make the proper conveyances of his property for his creditor's satisfaction. See sections 2991-2997 of the Code.

Section 3577 of the Code, which provides that, "On a judgment, execution may be issued within a year, and a *scire facias* or ACTION may be brought within ten years," etc., clearly leaves execution, *scire facias*, and action cumulative and equally available remedies for the enforcement of a judgment; of any of which the creditor may avail himself at his option.

Upon the general proposition that a judgment will support an action *ex contractu*, the authorities are unanimous. See Clark on Contracts, p. 755, and cases there cited, where it is said, "The judgment of a court of competent jurisdiction is not merely enforceable by the process of the court, but may be sued upon as creating a debt between the parties."

That execution and action are cumulative remedies upon a judgment, see Black on Judgments, sec. 958, and cases cited, where the learned author says, "At the common law an action of debt will lie on a judgment as soon as it is recovered, and without any regard to the plaintiff's right to take out executions." And in *Clark v. Goodwin*, 14 Mass. 239, it is said, "It has been decided that debt lies on a judgment within or after the year. The case referred to by Chief Baron Comyns is in 43 Ed. 3, 2, b, where it is said, 'If one recovers upon a statute merchant, and the statute gives an execution by *capias* and also against the land, that notwithstanding he may have a writ of debt.'"

For a discussion of *scire facias* and remedies on a judgment at com-

mon law, see 2 Tidd's Practice, 1101-2, and opinions of Judges Carr and Tucker in *Fleming's Ex'or v. Dunlop*, 4 Leigh, 338. It is said by Judge Carr (p. 339), "At common law, no *scire facias* lay in personal actions. When the plaintiff had suffered the year and day to pass without taking out execution, he was driven to an action of debt on his judgment. To remedy this inconvenience was one of the objects of the statute of Westm. 2. ch. 45, which gave *scire facias* in personal actions, not as a substitute for the action of debt, but as a cumulative remedy,"

For action of debt upon a judgment, see *Newcomb v. Drummond*, 4 Leigh, 57. And for the advantage of debt over *scire facias* in certain instances, see *Cosby's Ex'or v. Bell's Adm'x*, 6 Munford, 282. The *scire facias* merely revives the former judgment; the action of debt gives a new original judgment.

With the sanction of the foregoing authorities, there would seem to be no good reason why a judgment-creditor in Virginia might not proceed, by *capias ad respondendum*, on a new action upon his judgment, under section 2991 of the Code, instead of restricting himself to the dangerous and tedious proceedings ordinarily employed against absconding judgment-debtors prescribed by section 3606.

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